THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE D. APPA RAO

WRIT APPEAL No.1434 of 2004

22nd August 2006

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 10.09.2004 in W.P.No.9636 of 2004 on the file of the High Court)

Between:

P. Lakshma Reddy, S/o Sri P. Rami Reddy.

.. Appellant.

And
B. Kulanda Reddy, S/o B. Venkata Rami Reddy
and three others.

.. Respondents.

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

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WRIT APPEAL No.1434 of 2004

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JUDGMENT: (Per Hon'ble Sri Justice B. Prakash Rao)

The appellant herein, who is the fourth respondent in the Writ Petition, filed this appeal, *inter alia,* assailing the order 10.09.2004 allowing the Writ in W.P. No. 9636 of 2004 at the instance of the first respondent herein seeking for a mandamus and setting aside the proceedings No.25/SGT/2004, dated 22.05.2004 promoting the appellant herein as illegal and consequently directing to consider the case of the first respondent.

Heard Sri P. Balakrishna Murthy, learned counsel appearing for the appellant, Sri G. Vidyasagar, learned counsel appearing for the first respondent, learned Government Pleader appearing for the respondents 2 and 3 and Sri K. Ravi, learned Standing Counsel appearing for the fourth respondent/temple.

Few facts, which are necessary for disposal of this appeal, are

that the appellant and the first respondent belong to two different Institutions where under they have been serving as its employees. The first respondent was initially appointed as a Junior Assistant on 13.05.1983 in Sri Ganesh Temple at Secunderabad and later he was promoted as a Senior Assistant therein on 14.02.1990 subject to condition of his passing requisite tests. On a letter filed by him, the Commissioner, Endowments clarified by a letter dated 01.02.1993 that there is no necessity of passing the Accounts Test Part-I for being promoted to the post of Senior Assistant in respect of the employees of the Institutions other than the basic cadre. The first respondent was transferred to Ellamma – Pochamma temple, Balkampet, Hyderabad on 20.08.1997 and later again he was transferred to Sri Ganesh Temple, Secunderabad on 23.08.2002 and in the same proceedings the appellant was also transferred to parent temple Sri Ujjaini Mahankali temple, Secunderabad. The three Men Committee was constituted on 12.12.2003 for promotions, sanction of new posts, transfers etc. There have been revision of cadre strength of Sri Ganesh Temple, the second respondent herein as per the proceedings dated 21.05.2004 sanctioned two posts of Superintendents. As per the proceedings dated 22.05.2004, the appellant was promoted as Superintendent against which the first respondent submitted a representation on 25.05.2004 and again on 31.05.2004. Since no

orders were passed, the first respondent herein filed the present Writ Petition challenging the promotion of the appellant herein as he is fully qualified than that of the appellant. Hence, the Writ Petition.

Contesting the claim of the first respondent, the case of the appellant was that of total denial as to the entitlement of promotion and further stated that in fact, the first respondent was not qualified and that apart the first respondent was reverted as per the orders dated 18.01.1993 and he continued to be only Junior Assistant and therefore, the question of considering his case or entitlement for promotion does not arise and thus, the he has been rightly promoted.

The learned Single Judge by taking into consideration the relevant submissions from both the sides and the rules as made under G.O.Ms.No.888, dated 08.12.2000, held that the first respondent was promoted as a Senior Assistant on 14.02.1990 on condition to pass department test within a period of three years and he was reverted to the cadre of Junior Assistant since he did not pass the departmental test within the required period and again, he was promoted as a Senior Assistant in July 1997 and the temple in question does not fall within the Rule 36 of the aforesaid Rules and further held that the appellant was working on deputation and therefore, there is violation of Rule 33 of the said Rules and thus, the first respondent was being eligible for

promotion, no promotion ought to have been given to the appellant and set aside the promotion given to the appellant and directed to consider the case of the first respondent along with the eligible employees if any from the same Unit to the post of Superintendent and pass orders in accordance with law.

Sri P. Bala Krishna Murthy, learned counsel appearing for the appellant strenuously contended that primarily the aforesaid G.O.Ms.No.888 has no retrospective operation and even other wise the reversion order of the first respondent dated 18.01.1993 has not been assailed nor challenged and therefore, he was not continued to be Senior Assistant at the relevant point of time and the effect thereof having not been considered by the learned Single Judge, the question of setting aside the orders of promotion of the appellant or to hold that the first respondent is entitled for promotion is wholly un-sustainable.

Sri G. Vidhyasagar, learned counsel appearing for the first respondent sought to sustain the orders of the learned Single Judge on the ground that having regard to Rule position, he was fully qualified in view of the fact that it is the parent Unit which has to be taken into consideration and he passed the accounts test for Subordinate Officers Part-I and after promotion as Senior Assistant in the year 1997, he was fully qualified and therefore, he was rightly held to be over and above the appellant.

Having heard the submissions made on either side and on perusal of the material available on record, the question which arises for consideration is as to whether the promotion effected in favour of the appellant is valid ?

There is no dispute in regard to the aforesaid chequered events in regard to their date of appointments and the posts held respectively by the appellant as well as the first respondent. Both belong to two different Units and two different temples. The main stand urged on behalf of the appellant is that the order of reversion of the first respondent from Senior Assistant to Junior Assistant and the effect thereof has not been considered and therefore, it cannot be said that the first respondent is eligible for promotion. No-doubt, on a comparative assessment, the initial appointment is concerned in between these two individuals, the first respondent was appointed as a Junior Assistant on 13.05.1983 whereas the appellant was appointed as a Junior Assistant on 01.06.1988 and the first respondent was promoted as a Senior Assistant on 14.02.1990 whereas the appellant was promoted as a Senior Assistant on 23.09.1994 on its only transfer from the parent Unit of the appellant i.e., Ujjaini Mahankali temple, Secunderabad and the appellant was transferred and posted to Sri Ganesh Temple, Secunderabad in the year 1997 whereas though the

first respondent was transferred to Ellamma – Pochamma temple, Balkampet, Hyderabad, he was repatriated to his parent temple as per the proceedings dated 23.08.2002. There is no serious dispute in regard to these facts and further to the fact that the first respondent passed the accounts test for Subordinate Officers Part-I and in spite of his earlier orders of reversion as per the proceedings dated 18.01.1993 the fact of which though was not assailed by the first respondent, again he was promoted as a Senior Assistant in the year 1997 and therefore, by taking into consideration as on the date of consideration for promotion in the impugned orders dated 22.05.2004, the first respondent had completed five years of service in the category of Senior Assistant. Having regard to the provision under Rule 33 of the said Rules framed in G.O.Ms.No.888, dated 08.12.2000, each Institution or Endowment shall have to be treated as a separate Unit for the purpose of recruitment, seniority and promotion and therefore, the appellant cannot claim any sort of right or entitlement or interest in the parent Unit of the fourth respondent Sri Ganesh Temple, Secunderabad. Admittedly, the appellant's initially appointment and also the parent Unit is Ujjaini Mahankali temple and not Sri Ganesh Temple. Therefore, among the employees existing in the parent Unit, it is only the first respondent who necessarily needs to be considered

for promotion and not the appellant. This aspect has been given a go-bye by the authorities and passed the impugned orders effecting the promotion in favour of the appellant. Therefore, on a detailed consideration of the relevant merits vis-à-vis the rules concerned, the learned Single Judge has rightly held that the promotion effected in favour of the appellant is not valid and it is only the first respondent who needs to be considered for promotion. Merely because the earlier order of reversion has remained unchallenged, it will not have any affect on the required satisfaction of the qualifications which are existing as on the date of consideration of the case for promotion. Hence, we do not find any merits in the above appeal.

The Writ Appeal is dismissed. However, in the circumstances of the case, no costs.

B. PRAKASH RAO, J

D. APPA RAO, J

22nd August 2006.

Chvn.